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August 14, 1998

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Office of the Secretary
FEDERAL COMMUNICATIONS COMMISSION
1919 "M" Street, N. W., Room 222
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket No. 94-102

Dear Sir or Madam:

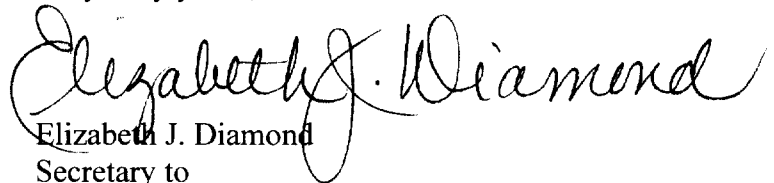
Enclosed for filing are an original and ten (10) copies of the following document in the above-referenced proceeding:

**COMMENTS OF
THE CELLULAR CARRIERS ASSOCIATION OF CALIFORNIA
ON REQUEST FOR
AN EMERGENCY DECLARATORY RULING**

Please have delivered to each Commissioner a copy of the enclosed document and return an endorsed, file-stamped copy of the document in the enclosed self-addressed, postage-paid envelope.

If you have any questions, please do not hesitate to contact our office.

Very truly yours,



Elizabeth J. Diamond
Secretary to
MICHAEL B. DAY
JEANNE M. BENNETT

EJD
Enclosures

cc: Commissioners, w/enclosure

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ENCLOSURE

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ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

RECEIVED

AUG 14 1998

Wireless Compatibility with
Enhanced 911 Emergency Calling
Systems

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CC Docket No. 94-102 FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF
THE CELLULAR CARRIERS ASSOCIATION OF CALIFORNIA
ON REQUEST FOR AN EMERGENCY DECLARATORY RULING

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Executive Director

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August 14, 1998

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

Wireless Compatibility with)	
Enhanced 911 Emergency Calling)	CC Docket No. 94-102
Systems)	

**COMMENTS OF
THE CELLULAR CARRIERS ASSOCIATION OF CALIFORNIA
ON REQUEST FOR AN EMERGENCY DECLARATORY RULING**

Pursuant to the July 30, 1998 Public Notice of the Wireless Telecommunications Bureau of the Federal Communications Commission, the Cellular Carriers Association of California ("CCAC") hereby comments on the request for an emergency declaratory ruling solicited by the State of California's 911 Program Manager, Leah Senitte. The CCAC will tailor its comments in a manner which responds to the three questions placed before the Wireless Bureau by the state's 911 Program Manager. CCAC appreciates the opportunity to comment on these important policy issues which, if appropriately addressed, will result in the rapid deployment of wireless E 911 services in California and around the country.

As an initial matter, CCAC notes that the E911 trial in Los Angeles is going forward. PBMS, AirTouch, LA Cellular and Sprint are all participants in the efforts and have been actively engaged with the state of California's 911 manager on this project for nearly a year. Two of these carriers, PBMS and Airtouch, have reached agreement with the state for delivery of E911 traffic, LA Cellular and Sprint expect to follow suit soon.

1. Do carriers have an obligation to deploy wireless E911 (Phase I) in California despite the fact that State statutes do not provide immunity from liability for E911 service which is provided?

Although the language of the FCC's final order and the regulations implementing that order do not expressly condition a carrier's obligation to deploy wireless E911 on receipt of immunity (state or federal) for liability connected with the provision of E911 service, the FCC should act to provide such immunity for carriers. At a minimum, the obligation to offer Phase One E911 services should be conditioned on an adequate limitation of liability.

The rationale of the FCC in denying exemption from liability to providers of E911 service has not borne out for California. In its December 1997 order, the FCC stated that:

Although the Commission may preempt state regulation when preemption is necessary to protect a valid regulatory objective, we believe it is premature and speculative for the Commission to establish a national standard of liability protection in order to achieve rapid deployment of wireless E911 services.¹

It is clear from these statements, that the FCC anticipated that individual states would take the necessary actions to provide the needed protection to ensure deployment. Thus, the Commission stated:

Contrary to petitioners' speculative claim that current state laws are not likely to provide wireless carriers with adequate protection against liability, the record indicates that state legislative bodies and state courts are developing their own solutions to liability issues. While we recognize that not all states currently provide specific statutory limitation of liability protection for wireless carriers, we believe that state courts and state legislatures are the

¹ Revision of the Compliance Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Memorandum Opinion and Order, ¶ 137 (December 1, 1997).

proper forum in which to raise this issue, not the Commission.²

In addition to the anticipated actions of the states, the Commission had earlier opined that carriers could protect themselves contractually in the absence of statutory or other satisfactory liability protection. Although most carriers have language in their written customer contracts that limit liability, the CCAC does not view that as adequate protection from liability. California law, and the laws of many other states, do not favor such provisions in contracts. A growing number of wireless transactions are paperless or electronic transactions in which there is no written contract and no opportunity to contractually limit liability. Due to the requirement to deliver 911 calls from non-initiated phones, there is no ability to enter into a contract with non-subscribers, a fact recognized by the Commission.³

CCAC has ardently attempted to resolve this matter at the state level. Legislation, AB 909 (Thomson/Runner), was formulated and placed before the California Legislature. This bill would have modified state law to allow wireless 911 calls to be routed, as appropriate, to PSAPs other than the California Highway Patrol ("CHP"). As set forth more fully in response to Section 3 below, state law requires cellular 9-1-1 calls to be answered by the CHP. The legislation also would have limited carriers' liability with respect to E911 service to acts of willful misconduct or gross negligence, the same protection enjoyed by landline carriers. These recommendations were advanced by the State's Wireless 911 Task Force to improve wireless 911 service. The bill was broadly supported by emergency aid organizations, law enforcement agencies, local governments and more. It also received strong editorial support. See material

² Id. at ¶ 138.

³ Id. at ¶ 140.

in Attachment A. Unfortunately, due to the strong opposition of the state's trial bar, the bill was blocked in the Senate's Judiciary Committee and is dead for the year. While CCAC will persist in its efforts to secure adequate liability protection from the State Legislature next year, the likelihood of success is slim.

While the CCAC recognizes that certain states have provided qualified immunity to wireless carriers, this is not reason to forego the issuance of a federally mandated limitation on liability or the conditioning of E911 deployment on such protection. This is a federal mandate that needs a national solution. In adopting the E911 standards, the FCC recognized the importance of improving the quality and reliability of 911 services available to wireless callers. The state of California represents over 10% of the nation's 61.6 million wireless users. Policies that affect only California will still have an enormous impact. The problem is not "speculative" -- resolving the liability issue will expedite the deployment of wireless E911 technology in California and around the country.

2. If carriers are obligated to deliver Phase I service without immunity from liability (either statutory or contractual), is the State required under the cost recovery rules to reimburse carriers for the cost of insurance policies covering their provision of E911 service?

A significant potential cost of providing E911 services is the possible liability faced by a carrier for injuries alleged by a caller if the technology associated with E911 fails -- i.e., the emergency call does not get relayed in the intended fashion.

If carriers are required to go forward without immunity and the cost of insurance covering the provision of E911 service is not reimbursed, then there is not adequate cost recovery and the obligation to provide E911 service is extinguished.. The FCC clearly recognized the necessity of funding mechanisms being established on a state/local basis to ensure

that wireless carriers recoup their costs of providing E911. In the absence of state immunity the cost of purchasing insurance is a necessary component of cost recovery. It is an additional cost the carrier would not have had to bear but for the E911 mandate.

3. Regarding selective routing, what is meant in the Commission's E911 First Report and Order by the reference to "appropriate PSAP"?

CCAC believes that the appropriate PSAP is the one designated by statute, regulation or contract. Section 2982 of the California Public Utilities Code designates the nearest California Highway Patrol Communications Center (there are 24 in the state) as the entity to receive 9-1-1 calls from cellular units. The statute reads:

The commission shall, by rule or order, require that every facilities-based cellular service provider provide access for end users on its system to the local emergency telephone services described in Section 53100 of the Government Code, that they shall utilize the "911" code as the primary access number for those services, and that "911" calls from cellular units shall be routed to the nearest appropriate California Highway Patrol communications center. In addition, the commission, by rule or order, shall require that every cellular service provider include in its tariffs a provision to the effect that there shall be no airtime or

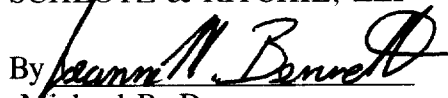
similar usage charge for calls placed from a cellular unit to the emergency telephone services system.

Thus it is clear in California that the "appropriate PSAP" is the California Highway Patrol.

Respectfully submitted,

GOODIN, MACBRIDE, SQUERI,
SCHLOTZ & RITCHIE, LLP


By


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CELLULAR CARRIERS ASSOCIATION
OF CALIFORNIA

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Attorneys for
Cellular Carriers Association of California

August 14, 1998

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ATTACHMENT A

STATES WITH LIABILITY PROTECTION FOR WIRELESS 9-1-1 SERVICE PROVIDERS

**ALABAMA
ALASKA
ARIZONA
ARKANSAS
COLORADO
IDAHO
INDIANA
IOWA
KENTUCKY
LOUISIANA
MAINE
MARYLAND
MINNESOTA
MISSISSIPPI
MISSOURI
NEW JERSEY
NEW MEXICO
OREGON
PENNSYLVANIA
RHODE ISLAND
SOUTH DAKOTA
TEXAS
VERMONT
VIRGINIA
WASHINGTON
WEST VIRGINIA**

AB 909 – Runner, Thomson WIRELESS 9-1-1 DIRECT CONNECT

SUPPORT

[Revised May 11, 1998]

AirTouch Communications
American Red Cross
BellSouth Cellular Corporation
California Chamber of Commerce
California Emergency Nurses
Association
California Fire Chiefs Association
California Highway Patrol
California Manufacturer's
Association
California Professional Firefighters
California Public Safety Radio
Association, Inc.
California State Sheriffs' Association
California State Association of
Counties
California Telephone Association
California Union of Safety
Employees (CAUSE)
Cerritos Chamber of Commerce
City of South Gate Police
Department
ComCARE Alliance,
Communications for Coordinated
Assistance and Response to
Emergencies
Emergency Medical Services
Administrators' Association of
California
Families First
Fire Districts Association of
California

GTE California
Haven Hills, Inc.
LA Cellular
Latin Business Association
Long Beach Area Chamber of
Commerce
Los Angeles County Sheriff Sherman
Block
Mothers Against Drunk Driving
(MADD)
National Emergency Number
Association (NENA), California
Chapter
National Highway Traffic Safety
Administration
Pacific Telesis Group
Sacramento County Sheriff Glen
Craig
Sacramento Mayor Joe Serna
Saint Clare's Home
Santa Cruz County Regional Transit
Commission
Sierra-Sacramento Valley
Emergency Medical Services
Agency
Solano County Board of Supervisors
WEAVE – Women Escaping A
Violent Environment
Women's Transitional Living Center
YWCA of San Diego County,
Domestic Violence Services

National Emergency Number Association



47849 Papermill Road
Coshocton, Ohio 43812-9724
(614) 622-8911
Fax (614) 622-2090
1-800-332-3911

April 29, 1998

Ms. Helen Thomson, Assembly Member
California State Assembly
State Capitol Building - Room 4140
Sacramento, California 95814

Re: Wireless 9-1-1 Legislation

Dear Ms. Thomson:

I am writing to you and your colleagues on behalf of the National Emergency Number Association (NENA). NENA is the nation's largest professional organization dedicated to the perpetuation and integrity of 9-1-1. As you know we are in an era of unprecedented technological changes that are rapidly reshaping the telecommunications industry. As a result of these changes it is essential that 9-1-1 advances with these new technologies so that we can continue to improve our ability to provide the public with access to emergency services. The fundamental nature of 9-1-1 makes it imperative that the technological solutions that we adopt meet the highest standards of quality and reliability possible. NENA has become the premiere public safety industry organization for defining technical issues and recommending solutions for technology service providers, manufacturers, and industry related standard setting bodies. NENA has established recommended technical solutions and standards that will enable compatibility of 9-1-1 technologies, minimize costs involved in provisioning and maintaining public safety communications, and has increased effectiveness of 9-1-1 call handling and emergency response. NENA also promotes teamwork among industry providers of public safety services. NENA's Technical Committees are already hard at work developing new standards that will address the global technological challenges presented by today's wireless communications environment. However, success cannot be achieved without the voluntary cooperation of the telecommunications industry, product manufacturers, and public safety.


While immunity from liability is not a formal part of the FCC mandate, it is understandably an important issue to the wireless service providers. States all across the country are preparing to meet the FCC Rules and Orders calling for the establishment of new laws to provide a cost recovery mechanism. The states are also being encouraged to adopt qualified immunity provisions to ensure that wireless carriers are not held liable when a wireless call is mishandled except in cases of gross negligence.



At least one state has passed an immunity bill for wireless carriers even though they are still addressing legislation for cost recovery. At least 21 other states currently offer immunity for wireless carriers. Twenty-one other states have statutes that require clarification. In my own state of Ohio, where I chair the State Task Force representing Public Safety Communications Issues, I have strongly endorsed and encouraged our legislature to extend qualified immunity to our state's wireless service providers. Wireless carriers should be entitled to the same immunity from liability for 9-1-1 service that is enjoyed by the wireline carriers. Wireless E-9-1-1 legislation makes good sense not only for public safety officials and the wireless carriers, but ultimately for the nation's estimated 53 million wireless customers who expect and deserve to receive help when they use their wireless telephones to call 9-1-1.

If I can provide any additional support or encouragement please feel free to call on me. Thank you very much for giving me this opportunity to express my views concerning this important piece of legislation.

Respectfully,


William H. Hinkle
2nd Vice President

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A Gain for Emergency Calls

Relief is working its way through the state Legislature for cellular phone users worried about how, and how quickly, their 911 emergency calls will be answered. A bill by Assemblywoman Helen Thomson (D-Davis), AB 2596, would eliminate the California Highway Patrol as the middleman in many such calls, allowing them to pass directly to the appropriate local authorities.

The bill has already passed the Assembly's Utilities and Commerce Committee and faces its next test in the Assembly's Judiciary Committee next month. This is a sensible measure that deserves strong support.

Right now, every cellular 911 call is first routed to the Highway Patrol and then, if needed, to the police and/or fire departments closest to where the call originated. That was OK when there were few calls and better technology didn't exist. But the CHP has been swamped. In 1997, the state's wireless 911

system received 2.7 million calls, up from just 29,000 in 1985. The CHP winds up routing 30% of those calls to local authorities. The jam will only worsen as more and more digital telephone subscribers are signed up.

Wireless technology has improved and it is easier to determine where callers are when they dial 911. A call from Santa Monica could go directly to Santa Monica authorities. That would be progress. At worst under the Thomson bill, the current two-stop process would remain. The ultimate goal is technology that can pin down the origin of a cell call within 125 feet.

The bill limits the ability of crime victims and other 911 users to sue carriers, and trial lawyers object. But carriers can still be sued over willful acts or gross negligence, and the objections should not be allowed to stop the bill.

The elimination of delays and lifting the 911 burden from the CHP are vital goals; Thomson's bill goes far toward reaching them.

OPINION

Wireless aid

Don't let trial lawyers derail better 911 service

The surging use of wireless telephones has been both a boon for public safety and a growing headache for the 911 emergency system. The Legislature this year has a chance to ease that headache and open the way to a wireless emergency service that provides a better response for customers.

Under current law, all 911 calls made from wireless phones are routed to California Highway Patrol dispatchers around the state. That system made sense when most wireless phones were car phones and most 911 calls reported accidents or crimes on highways.

But today most of the state's nearly 6 million wireless customers dial portable phones that can be carried in a purse or pocket and are used to report emergencies not just on roads. The result has been a huge increase in the number of 911 calls to the CHP (the number has grown from 29,000 in 1985 to 3 million last year), and a corresponding increase in confusion and delays: Wireless 911 calls often must be routed to a CHP dispatch center scores of miles away from the emergency, where the operator must try to determine the location of the emergency and which local safety agency should respond.

A bill before the Senate Judiciary Committee, AB 909 by Assembly members Helen Thomson and George Runner, would change that. Following the recommendations of the state's Wireless 911 Task Force, it would permit public safety agencies and wireless phone companies, where appropriate, to route wireless 911 emergency calls directly to local government 911 dispatch centers. Combined with new FCC requirements that wireless companies begin to provide caller numbers and geographic locations of 911 callers, the bill would make wireless 911 calls

more like emergency calls over wired phones, which provide dispatchers an exact location of the caller.

This approach to improving wire 911 emergency service is broadly supported by public safety agencies and phone companies. The only obstacle to passage is the opposition of the trial lawyers, who oppose provisions in the bill that limit phone companies' liability in providing 911 service. They contend that, because many consumers subscribe to wireless phone services to feel more secure, a caller who suffers a loss when a wireless 911 call can't be completed should be able to sue the company.

That self-serving argument ignores the public's interest in promoting better 911 service. Wireless phone companies are required by law to provide 911 service without charge, not only to their customers, but to anyone who dials from a mobile phone. In return for that service, current PUC tariffs limit their liability to cases of willful misconduct and gross negligence. Land-line phone companies and all other participants in the 911 emergency system receive the same protection. AB 909's liability limits would simply preserve the status quo.

Wireless 911 emergency service has far to go to match the utility of land-line 911 calling. The technology has inherent limits. Even good networks drop calls because of terrain, obstacles and atmospheric interference. Getting to the point where the location of wireless 911 calls can be traced will require substantial innovation and investment. But AB 909 is an important step in the right direction. Making wireless phone companies uniquely vulnerable to lawsuits, as the trial lawyers selfishly demand, would only derail progress toward safer streets.

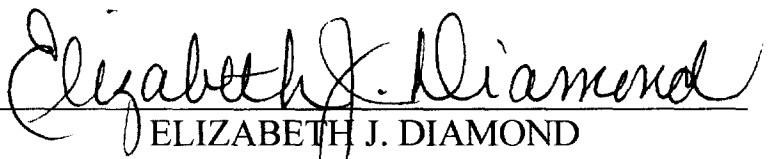
CERTIFICATE OF SERVICE

I, **ELIZABETH J. DIAMOND**, certify that I have, on this date, caused the foregoing ***COMMENTS OF THE CELLULAR CARRIERS ASSOCIATION OF CALIFORNIA ON REQUEST FOR AN EMERGENCY DECLARATORY RULING*** in ***CC Docket No. 94-102*** to be served by first-class U.S. Mail upon the party listed below:

***Leah A. Senitte
911 Program Manager
Emergency Telephone System Section
Department of General Services
STATE OF CALIFORNIA
601 Sequoia Pacific Boulevard
Sacramento, CA 95814***

I declare under penalty of perjury, pursuant to the laws of the State of California, that the foregoing is true and correct.

Executed on August 14, 1998 in San Francisco, California.


ELIZABETH J. DIAMOND